WEST virginia legislature

2023 regular session

ENGROSSED

Committee Substitute

for

House Bill 2122

By Delegates Steele and Hillenbrand

[Originating in the Committee on the Judiciary, Reported on February 21, 2023]

A BILL to amend the Code of West Virginia, 1931, as amended by amending §49-4-701(l), by removing language relating to statements while in custody, and adding thereto a new section designated §62-1A-12; relating to custodial interrogation of a child; requiring the child have contact with legal counsel by certain means; requiring the child have contact with a parent, guardian, legal custodian, or other legally recognized equivalent by certain means; permitting a law-enforcement officer to ask questions reasonably believed to be necessary to protect life or property without requiring contact with counsel, parents, guardians, or other recognized persons; and requiring questions of a child be limited to obtaining such information reasonably believed to be necessary to protect life or property.

Be it enacted by the Legislature of West Virginia:

CHAPTER 49. CHILD WELFARE.

ARTICLE 4. COURT ACTIONS.

§49-4-701. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; Constitutional guarantees; requirements; hearings; right to counsel; opportunity to be heard; evidence and transcripts.

(a) The circuit court has original jurisdiction of proceedings brought under this article. A person under the age of eighteen years who appears before the circuit court in proceedings under this article is a ward of the court and protected accordingly.

(b) If during a criminal proceeding in any court it is ascertained or appears that the defendant is under the age of nineteen years and was under the age of eighteen years at the time of the alleged offense, the matter shall be immediately certified to the juvenile jurisdiction of the circuit court. The circuit court shall assume jurisdiction of the case in the same manner as cases which are originally instituted in the circuit court by petition.

(c) Notwithstanding any other provision of this article, magistrate courts have concurrent juvenile jurisdiction with the circuit court for a violation of a traffic law of West Virginia, for a violation of section nine, article six, chapter sixty, section three or section four, article nine-a, chapter sixteen, or section nineteen, article sixteen, chapter eleven of this code, or for any violation of chapter twenty of this code. Juveniles are liable for punishment for violations of these laws in the same manner as adults except that magistrate courts have no jurisdiction to impose a sentence of incarceration for the violation of these laws.

(d) Notwithstanding any other provision of this article, municipal courts have concurrent juvenile jurisdiction with the circuit court for a violation of any municipal ordinance regulating traffic, for any municipal curfew ordinance which is enforceable or for any municipal ordinance regulating or prohibiting public intoxication, drinking or possessing alcoholic liquor or nonintoxicating beer in public places, any other act prohibited by section nine, article six, chapter sixty or section nineteen, article sixteen, chapter eleven of this code or underage possession or use of tobacco or tobacco products, as provided in article nine-a, chapter sixteen of this code. Municipal courts may impose the same punishment for these violations as a circuit court exercising its juvenile jurisdiction could properly impose, except that municipal courts have no jurisdiction to impose a sentence of incarceration for the violation of these laws.

(e) A juvenile may be brought before the circuit court for proceedings under this article only by the following means:

(1) By a juvenile petition requesting that the juvenile be adjudicated as a status offender or a juvenile delinquent; or

(2) By certification or transfer to the juvenile jurisdiction of the circuit court from the criminal jurisdiction of the circuit court, from any foreign court, or from any magistrate court or municipal court in West Virginia.

(f)(1) If a juvenile commits an act which would be a crime if committed by an adult, and the juvenile is adjudicated delinquent for that act, the jurisdiction of the court which adjudged the juvenile delinquent continues until the juvenile becomes twenty-one years of age. The court has the same power over that person that it had before he or she became an adult, and has the power to sentence that person to a term of incarceration: *Provided,* That any term of incarceration may not exceed six months. This authority does not preclude the court from exercising criminal jurisdiction over that person if he or she violates the law after becoming an adult or if the proceedings have been transferred to the court’s criminal jurisdiction pursuant to section seven hundred four of this article.

(2) If a juvenile is adjudicated as a status offender because he or she is habitually absent from school without good cause, the jurisdiction of the court which adjudged the juvenile a status offender continues until either the juvenile becomes twenty-one years of age, completes high school, completes a high school equivalent or other education plan approved by the court, or the court otherwise voluntarily relinquishes jurisdiction, whichever occurs first. If the jurisdiction of the court is extended pursuant to this subdivision, the court has the same power over that person that it had before he or she became an adult. No person so adjudicated who has attained the age of nineteen may be ordered to attend school in a regular, nonalternative setting.

(g) A juvenile is entitled to be admitted to bail or recognizance in the same manner as an adult and be afforded the protection guaranteed by Article III of the West Virginia Constitution.

(h) A juvenile has the right to be effectively represented by counsel at all stages of proceedings under this article, including participation in multidisciplinary team meetings, until the child is no longer under the jurisdiction of the court. If the juvenile or the juvenile’s parent or custodian executes an affidavit showing that the juvenile cannot afford an attorney, the court shall appoint an attorney, who shall be paid in accordance with article twenty-one, chapter twenty-nine of this code.

(i)(1) In all proceedings under this article, the juvenile will be afforded a meaningful opportunity to be heard. This includes the opportunity to testify and to present and cross-examine witnesses. The general public shall be excluded from all proceedings under this article except that persons whose presence is requested by the parties and other persons whom the circuit court determines have a legitimate interest in the proceedings may attend.

(2) In cases in which a juvenile is accused of committing what would be a felony if the juvenile were an adult, an alleged victim or his or her representative may attend any related juvenile proceedings, at the discretion of the presiding judicial officer.

(3) In any case in which the alleged victim is a juvenile, he or she may be accompanied by his or her parents or representative, at the discretion of the presiding judicial officer.

(j) At all adjudicatory hearings held under this article, all procedural rights afforded to adults in criminal proceedings shall be afforded the juvenile unless specifically provided otherwise in this chapter.

(k) At all adjudicatory hearings held under this article, the rules of evidence applicable in criminal cases apply, including the rule against written reports based upon hearsay.

(l) Except for res gestae, extrajudicial statements made by a juvenile who has not attained fourteen years of age to law-enforcement officials ~~or while in custody~~ are not admissible unless those statements were made in the presence of the juvenile’s counsel. Except for res gestae, extrajudicial statements made by a juvenile who has not attained sixteen years of age but who is at least fourteen years of age to law-enforcement officers ~~or while in custody~~, are not admissible unless made in the presence of the juvenile’s counsel or made in the presence of, and with the consent of, the juvenile’s parent or custodian, and the parent or custodian has been fully informed regarding the juvenile’s right to a prompt detention hearing, the juvenile’s right to counsel, including appointed counsel if the juvenile cannot afford counsel, and the juvenile’s privilege against self-incrimination. The admissibility of statements made by a juvenile, pursuant to a custodial interrogation, shall be governed by the provisions of §62-1A-12.

(m) A transcript or recording shall be made of all transfer, adjudicatory and dispositional hearings held in circuit court. At the conclusion of each of these hearings, the circuit court shall make findings of fact and conclusions of law, both of which shall appear on the record. The court reporter shall furnish a transcript of the proceedings at no charge to any indigent juvenile who seeks review of any proceeding under this article if an affidavit is filed stating that neither the juvenile nor the juvenile’s parents or custodian have the ability to pay for the transcript.

~~CHAPTER 61. CRIMES AND THEIR PUNISHMENT~~ CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 1A. SEARCH AND SEIZURE.

§62-1A-12. Custodial interrogation of a juvenile; consultation with legal counsel; admissibility of statements.

(a) For purposes of this section, "custodial interrogation" means any interview conducted by a law enforcement officer in such circumstances that would lead a reasonable person to consider himself to be in custody associated with arrest and during which the law-enforcement officer takes actions or asks questions that are reasonably likely to elicit a response from the person that could incriminate him.

(b) Prior to the custodial interrogation of a juvenile that has not yet attained fourteen years of age, the juvenile shall:

(1) Consult with, and have access to legal counsel in person, by telephone, or by video conference throughout the entirety of the custodial interrogation, and;

(2) Have contact and access to his or her parent, guardian, legal custodian, or other person standing in loco parentis in person, by telephone, or by video conference throughout the entirety of the custodial interrogation. The consent of the parent, guardian, legal custodian, or other person standing in loco parentis in person, is required in order for a juvenile to give an admissible statement pursuant to a custodial interrogation. The parent must be fully informed regarding the juvenile’s right to a prompt detention hearing, the juvenile’s right to counsel, including appointed counsel, if the juvenile cannot afford counsel, and the juvenile’s privilege against self-incrimination.

(c) Prior to the custodial interrogation of a juvenile that is fourteen years of age but has not attained eighteen years of age, the juvenile shall:

(1) Consult with, and have access to legal counsel in person, by telephone, or by video conference throughout the entirety of the custodial interrogation, or;

(2) Have contact and access to his or her parent, guardian, legal custodian, or other person standing in loco parentis in person, by telephone, or by video conference throughout the entirety of the custodial interrogation. The consent of the parent, guardian, legal custodian, or other person standing in loco parentis in person, is required in order for a juvenile to give an admissible statement pursuant to a custodial interrogation. The parent must be fully informed regarding the juvenile’s right to a prompt detention hearing, the juvenile’s right to counsel, including appointed counsel, if the juvenile cannot afford counsel, and the juvenile’s privilege against self-incrimination.

(d) Any statement made by a juvenile, during or after a custodial interrogation that does not comply with the provisions of this section shall be inadmissible as evidence unless:

(1) The law-enforcement officer who conducted the custodial interrogation of the juvenile reasonably believed the information sought was necessary to protect life or property from an imminent threat, and;

(2) The law-enforcement officer’s questions were limited to those that were reasonably necessary to obtain such information.

(e) Res gestae statements of the juvenile shall not be subject to the provisions of this section.

NOTE: The purpose of this bill is to establish limitation on law-enforcement officers conducting custodial interrogations of a child with certain exceptions.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.